

IN THE CIRCUIT COURT OF ST. CHARLES COUNTY
STATE OF MISSOURI

STATE OF MISSOURI,)	
JEREMIAH W. (JAY) NIXON,)	
Attorney General,)	
)	
Petitioner,)	Cause No.
)	
v.)	Division No.
)	
CAREN R. VINSON,)	
#3 Riverbend Court)	
St. Peters, MO 63376)	
)	
CHIPMUNK AUTO LOGISTICS, INC., and)	
#3 Riverbend Court)	
St. Peters, MO 63376)	
)	
CHIPMUNK TRANSPORTATION, INC.)	
#3 Riverbend Court)	
St. Peters, MO 63376)	
)	
Respondents.)	

**PETITION FOR PERMANENT
INJUNCTION AND OTHER RELIEF**

Plaintiff, the State of Missouri, by and through its Attorney General and Assistant Attorney General, states in support of its Petition for Permanent Injunction and Other Relief (hereinafter "Petition"):

PARTIES AND JURISDICTION

1. Jeremiah W. (Jay) Nixon is the duly elected and acting Attorney General of the State of Missouri and brings this action in his official capacity pursuant to §§407.020, and 407.100, RSMo. 2000.¹

¹ Unless otherwise noted all references to statutes are to Missouri Revised Statutes 2000.

2. Defendant Caren R. Vinson is an individual whose last known address is #3 Riverbend Court, St. Peters, Missouri 63376.

3. Defendant Chipmunk Auto Logistics, Inc. is a Missouri corporation in good standing. Its registered agent is Caren R. Vinson, #3 Riverbend Court, St. Peters, Missouri 63376.

4. Defendant Chipmunk Transportation, Inc. is a Missouri corporation in good standing. Its registered agent is Alvin L. Baldwin, #3 Riverbend Court, St. Peters, Missouri 63376.

5. This Court has subject matter jurisdiction over this matter pursuant to §§407.020 and 407.100, which allow the Attorney General to seek injunctive relief, restitution, penalties and other relief in Missouri circuit courts for violations of the Missouri Merchandising Practices Act, Chapter 407.

6. This Court has personal jurisdiction over the defendants because they transacted business within the State of Missouri.

7. Venue is proper in this Court pursuant to §§407.020 and 407.100 because acts which are alleged to violate Chapter 407 occurred in St. Charles County, Missouri.

MERCHANDISING PRACTICES ACT

8. Section 407.020 provides, in pertinent part:

1. The act, use or employment by any person of any deception, fraud, false pretense, false promise, misrepresentation, unfair practice or the concealment, suppression, or omission of any material fact in connection with the sale or advertisement of any merchandise in trade or commerce . . . is declared to be an unlawful practice. . . Any act, use or employment declared unlawful by this subsection violates this subsection whether

committed before, during or after the sale, advertisement or solicitation.

9. Section 407.100, provides:

1. Whenever it appears to the Attorney General that a person has engaged in, is engaging in, or is about to engage in any method, act, use, practice or solicitation, or any combination thereof, declared to be unlawful by this chapter, he may seek and obtain, in an action in a circuit court, an injunction prohibiting such person from continuing such methods, acts, uses, practices, or solicitations, or any combination thereof, or engaging therein, or doing anything in furtherance thereof.

2. In any action under subsection 1 of this section, and pursuant to the provisions of the Missouri Rules of Civil Procedure, the attorney general may seek and obtain temporary restraining orders, preliminary injunctions, temporary receivers, and the sequestering of any funds or accounts if the court finds that funds or property may be hidden or removed from the state or that such orders or injunctions are otherwise necessary.

3. If the court finds that the person has engaged in, is engaging in, or is about to engage in any method, act, use, practice or solicitation, or any combination thereof, declared to be unlawful by this chapter, it may make such orders or judgments as may be necessary to prevent such person from employing or continuing to employ, or to prevent the recurrence of, any prohibited methods, acts, uses, practices or solicitations, or any combination thereof, declared to be unlawful by this chapter.

4. The court, in its discretion, may enter an order of restitution, payable to the state, as may be necessary to restore to any person who has suffered any ascertainable loss, including but not limited to, any moneys or property, real or personal, which may have been acquired by means of any method, act, use, practice or solicitation, or any combination thereof, declared to be unlawful by this chapter. It shall be the duty of the attorney general to distribute such funds to those persons injured.

5. The court, in its discretion, may appoint a receiver to insure the conformance to any orders issued under subsection 3 of this

section or to insure the payment of any damages ordered under subsection 4 of this section.

6. The court may award to the state a civil penalty of not more than one thousand dollars per violation; except that, if the person who would be liable for such penalty shows, by a preponderance of the evidence, that a violation resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adopted to avoid the error, no civil penalties shall be imposed.

FACTS

10. Plaintiff incorporates by reference paragraphs 1 through 9 above as if fully set forth herein.

11. Defendants are engaged in the business of advertising and providing automobile transport services.

12. In some instances the defendants act as broker for other transport companies.

13. Upon information and belief, Plaintiff submits that consumers typically learn of defendants' business from advertisements in printed publications, or by research on the internet.

14. Upon information and belief, Plaintiff submits that a number of consumers who have called the defendants by telephone to inquire about automobile transport services have been told , by Caren Vinson or by someone else acting at her direction, that the defendants would deliver the consumer's automobile on a certain date, or within a certain range of dates, for a specific price and downpayment.

15. Upon information and belief, in the typical situation, after hearing the oral representations over the telephone regarding price, downpayment and pick-up and delivery dates,

consumers decided to employ the defendants to transport their automobiles, generally to a different state.

16. Upon information and belief, Plaintiff submits that, in the typical situation Caren Vinson, or someone else acting at her direction, sent a copy of the defendants' contract form to consumers, often by facsimile transmission, after the initial telephone conversation.

17. The terms and conditions portion of the contract form was written in very small print and, in some cases, was virtually illegible in the faxed copy.

18. In some cases, but not all, the defendants' contract form included a provision for keeping all, or a portion of, the consumer's downpayment in the event the consumers canceled the contract.

19. Upon information and belief, Plaintiff submits that many, if not all, of the consumers were not informed of the defendants' downpayment retention policy when they called by telephone to inquire about the defendants' automobile transport services.

20. In some cases, but not all, the defendants' contract form included a provision stating that the defendants do not guarantee a particular pick-up or delivery date.

21. Upon information and belief, Plaintiff submits that many, if not all, consumers were not informed of the "no-guarantee-provision" for pick-up or delivery date when they called by telephone to inquire about defendants' automobile transport services.

22. Upon information and belief, Plaintiff submits that, in many instances, the defendants failed to pick up the consumer's automobile within days or weeks after the original date or range of dates promised.

23. Upon information and belief, Plaintiff submits that, in many instances, the defendants failed to deliver a consumer's automobile on the date, or within the range of dates, promised.

23. Upon information and belief, Plaintiff submits that, in many instances, the defendants failed to pick-up the consumer's automobile with days or weeks after the original five to seven days promised.

24. Upon information and belief, Plaintiff submits that in many instances in which consumers called the defendants to ask why their automobiles had not been picked-up and/or delivered within the promised time period, the consumers were given a variety of purported excuses, either by Caren Vinson or someone else acting at her direction.

25. Upon information and belief, Plaintiff submits that in many instances, when the defendants failed to pick up the consumers' automobiles within the promised time period, the consumers canceled their contracts and demanded that the defendants return their downpayment.

26. Upon information and belief, Plaintiff submits that when consumers canceled their contracts and demanded that the defendants return their downpayment due to the failure to pick up and/or deliver the automobiles within the promised time periods, Caren Vinson, or someone else acting at her direction, told the consumers that the downpayments were not refundable.

27. Upon information and belief, Plaintiff submits that Caren Vinson, or someone acting at her direction, has promised consumers that a refund will be mailed to him or her on Friday, or on the 15th day of the month, but the consumers never received a refund, or, in some cases, received only a partial refund.

28. Upon information and belief, Plaintiff submits that Caren Vinson, or someone acting at her direction, has told some consumers that a refund has been sent, but the consumers did not receive a refund.

29. Caren Vinson has admitted to investigators for the Office of the Missouri Attorney General that the defendants owe restitution to a number of consumers as a result of having failed to pick up and/or deliver the consumers' automobiles as promised over the telephone.

30. Plaintiff submits that the defendants owe restitution to consumers including, but not limited to, the following:

Alan Burnstein	\$100.00
Shamus Curran	\$100.00
Patrick Duffy	\$50.00
Kathryn Fitzgerald	\$150.00
Carolyn Garrison	\$695.00
Charles Givre	\$50.00
Richard Goldman	\$150.00
Dixie Grimstad	\$200.00
Jeffrey Harrington	\$300.00
Steve Harris	\$50.00
William Jellinek	\$875.00
Alfred Karle	\$395.00
Michael Malinowski	\$895.00

Michael Mann	\$50.00
Paul Miller	\$50.00
Guillermina Molina	\$50.00
Pyler Olson	\$150.00
Les Piggot	\$50.00
Joan Politano	\$150.00
Tony Rosati	\$100.00
Allen Sterlbin	\$200.00
Don Whitfield	\$595.00

VIOLATION OF MERCHANDISING PRACTICES ACT

31. Plaintiff incorporated by reference paragraphs 1 through 28 above as if fully set forth herein.

COUNT I

32. The defendants, jointly and severally, have engaged in deception, fraud, false pretense, false promise or misrepresentation in connection with the advertisement and sale of automobile transport services in that they have promised to pick up for transport and deliver to another location consumers' automobiles on a date, or within a certain range of dates, and then failed to pick up or deliver the automobiles on the date, or within the range of dates, promised.

COUNT II

33. The defendants, jointly and severally, have engaged in the concealment, suppression or omission of a material fact in that they have failed to inform consumers – over the telephone and by clear and conspicuous disclosure in their contract form – that a consumers'

payment or downpayment for automobile transport services is non-refundable, in whole or in part, even if the defendants fail to perform as promised.

COUNT III

34. The defendants, jointly and severally, have engaged in the unfair practice of failing to return consumers' payments or downpayments for automobile transport services when the defendants failed to perform as promised.

COUNT III

35. The defendants, jointly and severally, have engaged in deception, fraud, false pretense, false promise and misrepresentation in connection with the advertisement and sale of automobile transport service in that they have told consumers that a refund will be, or has been, issued, and then failed to send a refund to the consumers.

RELIEF REQUESTED

WHEREFORE, in view of the foregoing, Plaintiff requests this Court to grant the following relief:

- A. An Order of this Court finding that the defendants have violated the provisions of § 407.020;
- B. A Permanent Injunction issued pursuant to § 407.100 prohibiting the defendants from employing the methods, acts, uses or practices listed above;
- C. An Order awarding to Plaintiff the costs of investigation and prosecution of this action pursuant to § 407.130;

D. An Order awarding restitution to those who have suffered an ascertainable loss, including, but not limited to, those consumers listed in Paragraph 30 above, as a result of the defendants' unlawful actions pursuant to § 407.100.4;

E. An Order awarding to the State of Missouri an amount equal to ten percent (10%) of the total restitution pursuant to § 407.140.3;

F. An Order awarding to the State of Missouri civil penalties in an amount up to or including One Thousand Dollars (\$1,000.00) per violation of § 407.020 pursuant to § 407.100.6;

G. An Order assessing courts costs against the defendants pursuant to § 407.130; and

H. An Order providing for such additional relief as may be just and appropriate in this action.

Respectfully submitted,

JEREMIAH W. (JAY) NIXON
Attorney General

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